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OFFICE OF PETITIONS

In re Reissue Application of :
Takeshi YUKITAKE, et al :
Application No. 09/866,811 : DECISION GRANTING PETITION
Filed: May 30, 2001 : UNDER 37 CFR 1.137(b)
Based on Patent No. 5,745,182 :
Issue Date: April 28, 1998 :
Attorney Docket No. JEL29186C-RE- :
DIV4 :

This is a decision on the petition, filed August 3, 2006, to revive the above-identified application under the unintentional provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

A review of the file record discloses that a final Office action was mailed on **February 19, 2004**, which set a shortened statutory period for reply of three (3) months, with extensions of time being available up to and including **August 19, 2004**. On May 20, 2004, in response to the final Office action, applicant submitted an amendment and supplemental reissue declaration. The examiner, on June 9, 2004, mailed an Advisory Action, pointing out why the supplemental reissue declaration filed on May 20, 2004 was defective. Thereafter, on July 7, 2004, July 26, 2004, August 19, 2004, and September 23, 2004, applicant submitted further amendments and supplemental reissue declarations. A three month extension of time fee was received on July 7, 2004.

In an Interview Summary Record dated June 9, 2005, the examiner stated that "the declaration filed on September 23, 2004 is defective due to the error statement which fails to be in compliance with MPEP 1414" and went on to point out the specific defects in the declaration and claims. On August 12, 2005, an amendment and supplemental reissue declaration were received. Thereafter, on December 9, 2005, a Notice of Allowability and Notice of Allowance and Fee(s) Due were mailed. The issue fee was timely paid on January 17, 2006.


At the time of the examiner interview on June 9, 2005, as well as the subsequent replies to the final Office action on September 23, 2004 and August 12, 2005, the maximum shortened statutory period for reply had already expired. Therefore, since a proper and timely reply placing the application in condition for allowance had not been filed prior to expiration of the maximum shortened statutory period set in the final Office action of February 19, 2004, the date of abandonment of this application is August 20, 2004 (taking into account the three month extension of time obtained pursuant to the provisions of 37 CFR 1.136(a)).

An examiner has no procedural authority with respect to an abandoned application. Lorenz v. Finkl, 333 F.2d 885, 891 142 USPQ 26, 30 (CCPA 1964). While it is unfortunate that, notwithstanding the lack of a proper and timely reply to the outstanding Office action, the examiner subsequently issued a Notice of Allowability and a Notice of Allowance, such actions by the examiner were performed without proper authority, and thus, had no force and effect. The examiner has no authority to revive an abandoned application. Id. The examiner's indication of patentable subject matter in an abandoned application will not have the effect of saving that application from abandonment. Lorenz v. Finkl, supra. Therefore, the subsequent mailing on December 9, 2005 of a Notice of Allowability and Notice of Allowance and Fee(s) Due was improper in view of the abandoned status of this application. Nevertheless, in view of the granting of the petition to revive this application, as set forth below, the examiner's action in the mailing of the Notices of December 9, 2005 is hereby ratified.

The petition satisfies the requirements for revival under the provisions of 37 CFR 1.137(b). Accordingly, the belated filing of a proper and timely reply to the final Office action of February 19, 2004 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

As noted above, the issue fee has been paid. Accordingly, this application will be referred to Publishing Division for processing into a patent.


Frances Hicks
Petitions Examiner
Office of Petitions